

REMARKS

Reconsideration of the present application is amended is requested. In response to Applicant's Amendment filed on April 16, 2007, a Final Office Action was issued in which claims 212-224 were allowed and claims 211 and 225 were objected to as dependent upon a rejected base claim. Claims 211 and 225 were otherwise deemed to define allowable subject matter.

Applicants have amended claim 211 to incorporate the limitations of its parent claim 192, so it is believed that this claim is in condition for allowance.

Applicants have also amended claim 225 to include portions of its base claim 192. The subject matter of claim 225 that was deemed to be otherwise allowable is that the step of introducing the intermediate elements relatively moves the top and bottom elements apart only along the direction of the spine. Specifically, it was stated that in the cited reference "the separation or movement of the elements is not confined to the axis of the spine." See, Office Action, p. 4 "Response to Arguments". Thus, the amendment to claim 225 has focused on that allowable subject matter and the steps necessary to support that point of novelty.

Thus, the first step of claim 192 – accessing the intradiscal space – is incorporated verbatim into claim 225. The gist of the second step of claim 192 – providing an expandable structure of substantially similarly configured elements – has been added to claim 225. The separate definition of the top, bottom and intermediate elements in claim 192 has not been incorporated in amended claim 225. Instead, claim 225 refers to a plurality of similarly configured elements. The gist of the last step in claim 192, namely the consecutive individual introduction of the elements to distract and support the vertebral bodies, has been included in amended claim 225. While original claim 192 recites relatively moving the top and bottom elements "generally along the axis of the spine", amended claim 225 has retained the allowable subject matter that the elements are moved apart only along the axis of the spine.

While the amendment to claim 225 has not included all the language from base claim 192, the amendment does incorporate the elements of claim 192 that are sufficient to support the allowable subject matter of claim 225, namely that the similarly configured elements are moved relatively apart only along the axis of the spine. It is therefore believed that claim 225 is allowable as amended. Applicant has also added a new claim 226 that depends from allowable claim 225 and that further defines the contact between adjacent ones of the plurality of elements.

Finally, Applicants have amended claim 192 to define the relative movement of the top and bottom elements as the intermediate elements are consecutively individually introduced as occurring only along the axis of the spine. This definition follows the subject matter of claim 225 that was deemed to be allowable. Thus, with this change it is believed that claim 192 is distinguishable over the art of record for the reasons stated in the Examiner's "Response to Arguments", namely that the cited art fails to disclose confining the relative separation or movement of the elements to the axis of the spine. Claim 192 as amended is therefore believed to be allowable, along with its dependent claims 193-210.

These amendments have placed claims 211 and 225 in independent form and incorporated the necessary limitations of their respective base claim. Moreover, the amendment to claim 192 directly follows the Examiner's statement regarding the allowable subject matter in claim 225. Thus, these amendments do not incorporate any new matter and do not introduce any new subject matter into the claims that may require additional searching or analysis.

With this amendment, it is believed that the present application, including claims 192-197, and 209-226, is in condition for allowance. Action toward that end is earnestly solicited. The Examiner is invited to contact the undersigned to address any outstanding issues that may be addressed telephonically to advance this application to allowance.

Respectfully submitted,

July 13, 2007

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